No. 95-210

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

HOLLY FARMS CORPORATION;
TYSON FOODS, INCORPORATED,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

CHAUFFEURS, TEAMSTERS AND HELPERS,
LOCAL 391, 29, 71, 355, 592, 657, 988,
AND ALL AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,

Intervenor.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED AUGUST 4, 1995
CERTIORARI GRANTED NOVEMBER 6, 1995

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IN THE MATTER OF: HOLLY FARMS CORPORATION AND TYSON FOODS, INC.

BOARD CASE NOS. 11-RC-5583, 11 CA-13184, 11-CA-13267, 11-CA-13487, 11-CA-13520, and 11-CA-13619

Date	Documents
2-8-89	Initial Unfair Labor Practice Charge
2-16-89	Representation Petition filed in Case No. 11-RC-5583
3-14-89	Representation Hearing in Case No. 11-RC-5583
3-27-89	Decision and Order in Case No. 11-RC-5583
4-28-89	Order Reopening Case and Reopening Hearing and Notice of Hearing in Case No. 11-RC-5583
5-12-89	Reopened Hearing in Case No. 11-RC-5583
5-18-89	Initial Unfair Labor Practice Complaint
6-1-89	Initial Answer
6-20-89	Supplemental Decision and Direction of Election in Case No. 11-RC-5583
7-20-89	Decision on Review and Order in Case No. 11-RC-5583
10-13-89	Order Consolidating Cases, Consolidated Complaint and Notice of Hearing
11-27-89	Hearing on Consolidated Cases Opens

Date	Documents
5-2-90	Hearing on Consolidated Cases Closes
3-12-92	Decision of Administrative Law Judge
5-28-93	Board's Decision and Order
3-10-95	Opinion of United States Court of Appeals for the Fourth Circuit
5-9-95	Order Denying Petition for Rehearing with Suggestion for Rehearing In Banc
8-4-95	Petition for Writ of Certiorari
11-6-95	Order Allowing Certiorari

APPENDIX A

NATIONAL LABOR RELATIONS BOARD

Case No. 11-RC-5583

In the Matter of:

HOLLY FARMS FOODS, INC.

AND

CHAUFFEURS, TEAMSTERS, AND HELPERS LOCAL UNION NO. 391, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO

Pages: 1-158

Place: WINSTON-SALEM, NORTH CAROLINA

Date: TUESDAY, MARCH 14, 1989

* * *

[13] DIRECT EXAMINATION

BY MR. HUDSON:

Q. Mr. Whittington, will you state your name for the record, please?

A. Sam Whittington.

Q. And who are you employed by?

A. Holly Farms.

Q. In what capacity are you employed?

A. I'm the live production manager.

Q. Okay, Mr. Whittington, could you describe in general terms Holly Farms operations in North Carolina?

A. What we do we take baby chicks as we call pullets and we place these in pullet growing houses. We raise these pullets up to twenty weeks of age. We move them from the pullet house – we have the pullet movers – to a laying house where we collect the hatching eggs and – by contract farmers. Then, we bring the hatching eggs in by the egg haulers to our hatchery facilities.

We hatch the baby chicks. We process the baby chicks there in the hatchery by piggy back system where that we trim the beaks and vaccinate the birds. Then, these birds go from the hatchery back out to contract growers. They keep the [14] birds there for about seven weeks of age. Just makes a fryer or the bird that ends up at the supermarket. These are where the catchers go out and catch the bird from the farms and bring them back into out processing facilities.

And, in that we have feed delivery department where that – the feed mill where we make the different type feeds that we feed the pullets, the hens and the broilers. Then, we have feed delivery guys that deliver the feed from the feed mill out to the growing farms.

Q. Are you familiar with the petition of the labor Union that's seeking to represent certain job descriptions at Holly Farms?

A. Yes, sir.

Q. And, I'm going to ask you a couple questions concerning those jobs. The chicken catchers – could you describe for us the job duties that a chicken catcher has?

A. The catcher, himself, he catches the birds at the broiler growing farm. Puts them into a cage and you want the rest of what goes with him? Catchers?

Q. Yes.

A. Then, we have drivers that drive the trucks out to the – we have a crew – let me start off. We have a crew that goes to the catching farm. In that we have the truck drivers and we have a fork lift operator. And we have nine catchers and a supervisor that makes up a catching crew. And, they leave our [15] facilities, go out to the catching farm, catch their days chickens. The forklift operator drives a truck to the farm and he operates a forklift by putting the cages inside the broiler house for the catchers to put the birds in. Loads the truck back and then the drivers, then take the trucks to and from the farm.

Q. What does a chicken catcher work out of? What facility?

A. At the processing plant.

Q. Do they have their own office at the processing plant?

A. Yes, sir.

Q. The pullet movers – could you describe what they do and the difference between a pullet mover and a chicken catcher?

A. The pullet movers are in the hatchery area. They're the people – when we take the pullet and raise it up to twenty weeks of age – we get ready to move it to the laying farm – they're the guys that go out and catch these pullets and then we have a group of guys with them that vaccinate the birds at that same process and then we move them to the laying house.

Q. For the record, what is a pullet?

A. A pullet is a female young hen before she starts laying eggs.

Q. A pullet is not used – doesn't go through the normal life haul operation, is that correct?

A. No.

Q. They're used for laying eggs.

[16] A. Right.
Q. What do the pullet movers work out of?
A. They work out of the hatchery department.
Q. Which hatchery?
A. Hatchery number two.
Q. Is that the only facility?
A. Yes.
Q. Okay. Let's start with the live haul drivers. They go, as you said, with the live haul crew. Where do they transport chickens from and to?
A. From the contract grower back to the processing facilities.
Q. Okay. Where do they report in and out of?
A. They report into the live haul operation at the processing plant.
Q. Same place as the chicken catchers?
A. Yes.
Q. And, the forklift operators?
A. The same facilities. They work as a unit.
Q. Do they – they work as a unit at all times?
A. Yes.

* * *

[21] Q. The feed drivers – the feed mill drivers – could you describe their job?
[22] A. The drivers are the men that deliver the feed to the different birds – the pullets, the hens and the broilers. What they do, they pick up their load of feed at the feed mill. They load their feed. They take it out to the growing farm, unload the feed as it's instructed by the delivery sheet.
Q. And, they report in and out of where?
A. Roaring River.
Q. And, they unload and load themselves?
A. Yes.

Q. What kind of facilities are located at Roaring River?
A. At Roaring River we have the feed mill where we manufacture the feed and then in a separate department we have the feed deliver men and then, on that same facility, we have a shop there.
Q. So, the feed mill's a different facility then the deliver?
A. Yes, two different departments.

* * *

[27] Q. Who is the live haul driver – who is their supervisor?
A. Ray Loven.
Q. And, the forklift operators?
A. The forklift operator would be under the supervisor of each crew. And, that supervisor reports to Ray Loven.
Q. So, each crew has its own supervisor?
A. Right.
Q. Approximately how many crews are there?
A. There's twelve.
Q. And, a crew consists of the forklift, the chicken catchers and the drivers.
[28] A. That's right.

* * *

[37] Q. * * * But let's start with pullets. Pullets, I understand, are breeder chickens. Is that right. They're the ones who are going to lay the eggs.
A. That's correct. Yes, sir.
Q. And, you get those from somewhere – from some where other than Holly Farms. Is that right?
A. Part of them we buy from breeder companies as a baby chick and a portion of those chickens we produce ourselves.

Q. Is it fair to say that the largest proportion are the ones that you buy?

A. Yes.

Q. Do you know about what the percentages would be on that?

A. 80% or better.

Q. 80% or more you buy from somebody outside the Company.

A. As baby chicks.

Q. Now, when you buy them from outside the Company as baby chicks they're then taken from the place that you buy them to some farmers who are going to raise them. Is that right?

A. True, yes.

Q. Now, the farmers who raise them are not Company employees. They're independent. Is that correct?

A. They're contract growers.

Q. Okay. What are the people called who take these breeders from the place that you buy them to the contract growers?

A. That's the people that sell the product. They deliver [38] them on their truck.

Q. So, you don't have any people –

A. We have service personnel that help unload the chickens at the farm.

Q. Who is that?

A. That is the breeder service men, pullet service men.

Q. But they're not any of the job descriptions we've been through here?

A. No.

Q. Okay. Tell me again. They are called contract growers? Is that –

A. Yes, sir.

Q. Now, the time these contract growers get these breeder chickens the chickens are within a week old. Is that right?

A. Yes. One or two days old.

Q. Okay. And, the contract grower raises these chickens until twenty weeks?

A. Yes.

Q. And, I'm talking about breeders again.

A. That's right.

Q. All that growing is done by the contract grower and that's not done by Company people?

A. The facilities that the chickens are in are by the farmer – by the contract grower.

Q. Okay.

[39] A. We have employees that supervisor those growers.

Q. Who are those employees?

A. Those are the pullet service men that we referred to earlier.

Q. But there again, they're not part of the group classifications here?

A. No.

* * *

[41] Q. The pullet movers will load the grown chickens onto the truck, drive the truck to the laying house and then unload the [42] truck. Is that a fair description of what they do?

A. Yes.

Q. Okay. Now, the laying houses, are those owned by Holly Farms or are those independent?

A. They're independent farmers.

Q. And, so the independent farmers will see to the laying of eggs –

A. Through the supervision of our personnel, yes.

Q. And, again, who supervises them?

A. The breeder service personnel.

Q. And, those aren't within the bargaining unit proposed here either?

A. No.

Q. So, after the eggs are hatched, then we have egg haulers that come out to pick up the eggs, is that right?

A. That's right.

Q. And, are the eggs collected by the farmers and put in one place?

A. Yes.

Q. Are they put into cartons or something so they won't break?

A. Into cartons, yes.

Q. And, that's done by the people who operate the laying houses?

A. The farmer.

[43] Q. So, the egg hauler takes those cartoned eggs and puts them on the truck and drives them to the hatchery. Is that right?

A. That's right.

Q. And, unloads them at the hatchery?

A. Correct.

Q. And, that's all the egg hauler does?

A. Yes.

Q. Now we're in the hatchery. Is the hatchery owned by Holly Farms?

A. Yes.

Q. So – so when the eggs are unloaded at the hatchery someone takes them and puts them into incubators or something?

A. Yes.

Q. Who does that?

A. The production people in the hatchery.

Q. Okay. And the production people are within our proposed unit?

A. Yes.

Q. They put them in incubators. Do they do anything else to them before they hatch?

A. No, sir.

Q. And, when they hatch they pull the baby chicks out of the incubators and put them onto some kind of conveyor belt?

A. They're put into sitters and then employees transfer them [44] from the sitters to a hatcher and then when they hatch then they pull them out and put them onto the belt.

Q. Let's go back a minute. They put them into sitters or setters?

A. Setters.

Q. S-e-t-t-e-r. What's a setter?

A. A setter is where the eggs stay eighteen days.

Q. And, that's before they hatch, obviously, if they're eggs. Are they kept warm there?

A. Sure.

Q. And, who is it that puts them into the setters –

A. Production people in the hatchery.

Q. And, the production people than take them from the setter to the incubator where they hatch?

A. Yes.

Q. And, then, once they hatch, the production people take them from the incubator to some kind of conveyor belt?

A. Yes.

Q. Okay. And, the production people also sort of keep the place clean, too?

A. That's right.

Q. Is that all that the production people do?

A. Keeping things clean and sitting the eggs – transferring the eggs – when you say clean, they are washing and disinfecting the hatchers each time that you pull a hatch of [45] chickens out of them.

Q. So, now while we've gone from the egg haulers to unloading the trucks to putting them on the setters to putting them in incubators to putting them in the conveyor belt, plus keeping things clean and disinfecting and all that. We're now on the conveyor belt, okay.

The baby chicks go down the conveyor belt, at which point what happens to them?

A. The ladies that are paid by the box picks the chicks up, trims the beak and vaccinates the chicken.

* * *

[46] Q. So, they're debeaked and vaccinated and then what?

A. Then, they're ready to be delivered to the growing farm if they're broilers. If they're going to be sexed – then they are sexed and then delivered to the growing farm.

* * *

[47] Q. And the chick delivery boys take them out to farms where they're to be grown?

A. That's correct.

Q. Now, the people who grow them on these farms are, again, independent contract growers, is that right?

A. Right.

Q. So, the chick delivery boys, their function is to take boxes of newly born chicks, put them on a school bus or a bus of some sort and take them out and deliver them to the people who are going to grow them. Is that correct?

A. That's correct.

Q. Do they unload them there?

A. Yes.

Q. Take them off the bus and put them down?

A. Put them in the house.

Q. And, at this point, you said they're within – this is the day that they're hatched.

A. That's right.

Q. How long do they stay at the independent contract [48] growers?

A. Basically forty-nine days.

Q. Are they inoculated or vaccinated in that time?

A. No, sir.

Q. So, the next interaction the Company has with these contract growers, except for possibly some supervision, is when they pick them up after forty-nine days.

A. That's correct.

Q. Who picks them up?

A. The catchers – live haul.

Q. This crew that we're talking about, the catcher live haul crew?

A. That's right.

Q. Now, the catcher live haul crew primarily consists of catchers and drivers.

A. Forklift –

Q. And forklift people. Do the forklift people come out to the farms?

A. Sure.

Q. So, there are three types of people who come out to the farms that pick them up.

A. That's right.

Q. And, when you say catcher what catcher means is they run around the ground grabbing them and putting them in boxes or cartons or cages or something. Is that right?

[49] A. Basically, yes.

Q. And, the forklift people take those cages and lift them up onto the truck, is that right?

A. That's right.

Q. And, the other people are called live haul, is that right?

A. These people are live haul.

Q. The live haul drivers will then drive them from the independent grower to the processing plant?

A. Correct.

Q. And, then will they unload them there?

A. They park the truck there.

Q. Park the truck there and somebody else unloads it.

A. Correct.

Q. Who unloads it?

A. People at the processing plant.

Q. Is the processing plant Holly Farms owned place?

A. Yes.

Q. Are the people who unload the trucks there and go in the processing plant, are those part of the unit that we've proposed here?

A. No, sir. Not the ones that unload the chickens if that's what you're referring to.

Q. That's what I meant by that question. So, when we look at this crew that goes out to these independent growers, they [50] pick up grown chickens that are going to be broiler chickens, these aren't breeders anymore. Is that right?

A. That's right.

Q. They run around the ground, they catch them and put them in cages, load them on the trucks and then drive them to the processing plant. Is that right?

A. That's –

Q. Do they vaccinate them there? I mean do they vaccinate them when they catch them?

A. No.

* * *

[57] Q. * * * The contract growers who actually grow the breeder chickens up to twenty weeks get paid by the square footage?

A. That's correct.

Q. Of their farm?

A. Right.

Q. The laying facility operators get paid by the number of eggs they get picked up by Holly Farms?

A. That's correct.

Q. And, the broiler growers who take the one day old or newly hatched baby chicks and raise them to forty-nine weeks, how do they get paid?

A. By the thousand of birds.

* * *

[110] Q. Let me have a minute please. One other question. We talked about the chicken catchers going out there and running down the chickens and putting them in boxes. And, those are employees of Holly Farms but, the farm hands who work on the farm on a day to day basis are employees of the independent contractor, is that correct?

A. If they have –

MR. HUDSON: Objection.

[111] BY MR. LESSLEY:

Q. If they have any?

MR. HUDSON: I don't believe he has knowledge of who the farmer hires as an employee.

BY MR. LESSLEY:

Q. If you know.

MR. HOGG: We would be willing to agree that if the farmer has any employees, they're his employee but, we don't know whether he does or not.

HEARING OFFICER REESE: Do you know whether the farmer has employees?

THE WITNESS: Some farmers do. Basically, it's the owner of the farm that looks after the chickens.

HEARING OFFICER REESE: Objection is overruled.

* * *

APPENDIX B

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 11-RC-5583

HOLLY FARMS FOOD, INC. [1]

Employer

and

CHAUFFEURS, TEAMSTERS AND HELPERS
LOCAL UNION NO. 391, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA, AFL-CIO

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.

4. No question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6)(7) of the Act, for the following reasons:[2]

(See Attached)

ORDER

IT IS HEREBY ORDERED that the petition filed herein be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, NW., Washington, D.C. 20570. This request must be received by the Board in Washington by April 10, 1989.

Dated March 27, 1989 /s/ Willie L. Clark, Jr.
Regional Director, Region

at Winston-Salem, North Carolina

[SEAL]

[1]The Employer's name appears as amended at the hearing.

[2]The Employer is engaged in the operation of an integrated poultry business with hatcheries located in North Carolina at Wilkesboro, North Wilkesboro, Hayes, Seaford, Suncrest, Catawba and Fairplanes. In addition, the Employer has a feed manufacturing plant in Roaring River, North Carolina, and a processing plant which produces broilers for sale to retail stores. The Petitioner, in its petition, seeks a unit comprised of all hatchery, live haul and feed haul employees, including the following classifications: driving, maintenance, blood testers, quality control, injector, primary breeders, breeders, feather sexing, and chicken catchers at the Wilkesboro, North Wilkesboro, Hays, Roaring River, Seacrest, Suncrest, and Fairplanes, North Carolina facilities; but excluding all office employees, guards and supervisors as defined in the Act. At the hearing, the Petitioner asserted that an appropriate unit would in addition to the above classification, include all feed mill employees and feed mill mechanics at the Roaring River facility, plus the employees at the Employer's Catawba, North Carolina hatchery.

The Employer takes the position that all petitioned-for employees are agricultural employees specifically excluded from the definition of "employee" in Section 2(3) of the Act. It further asserts, in the alternative, that the petitioned-for employees fall into four separate categories: (a) hatchery employees; (b) live haul employees; (c) feed haul employees; and (d) blood test employees, which share a community of interest only within their separate groups. The Petitioner and the Employer each filed briefs which have been carefully considered.

The record indicates that chickens used for breeding purposes, called pullets or breeder chickens, and chickens destined for retail stores, called broilers, are both grown from the same process. Hatchery employees process eggs, which have been picked up and transported from breeder farms under contract with the Employer. The eggs are first put into setters and are then transferred to incubators. When the chicks hatch, they are vaccinated, de-beaked, sexed, boxed and shipped to the breeder farms where they are grown. Once grown, the chickens are separated into the categories of pullets and broilers. Chicken catchers, as part of live haul crews (which include, one truck driver, and one fork lift operator), catch the broilers, box them and transport them to the processing plant. Pullet movers catch the pullets, vaccinate them, box and then transport them to laying houses. The breeder chickens then lay eggs which are gathered by the contract farmer and hauled by the Employer's employees to the hatchery to start the process again. Additionally, about 80 percent of the breeder chickens are purchased as baby chicks from farms and are then combined with the hatchery-produced chickens at the laying house. The record reflect that there is significant interchange among employees who are based at the hatchery locations. For example, hatchery employees are sent to gather eggs and to do the work of blood test department employees. The hatchery live haul drivers regularly perform hatchery and maintenance work. Also, blood test employees help hauling eggs, and help the pullet crews to catch chickens.

The record indicates that live haul employees consist of two separate and distinct groups, broiler catchers and pullet catchers. The broiler catchers work out of the processing plant while the pullet catchers and egg haulers

work in the hatchery operations. There is no interchange between these classifications. Broiler haulers do not haul pullets and pullet haulers do not haul broilers.

The Employer's feed mill operation at Roaring River, North Carolina consists of a feed mill, where grain is processed into feed, and a truck service center. At this location, feed mill employees process the feed and feed haul drivers transport it to the contract farms. Mechanics at this location service the trucks used to haul the feed. The record reflects that there is no interchange between the feed mill employees and any of the employees working in the hatcheries or the processing plant.

Section 2(3) of the Act excludes agricultural laborers from the classification of employees covered under the Act. Since 1946, Congress has added riders to the Board's appropriation bill providing that no part of the appropriation shall be used in connection with bargaining units composed of agricultural laborers as set forth in Section 3(f) of the Fair Labor Standards Act. Section 3(f) defines agriculture as follows:

> Agriculture includes farming in all its branches and includes . . . the raising of poultry, and practices, . . . performed by a farmer on a farm as an incident to, or in conjuction with such farming operations . . .

The hatchery employees, on the basis of the record herein, are clearly engaged in the raising of poultry within the meaning of Section 3(f) of the Fair Labor Standards Act. See, e.g., *Arkansas Valley Industries, Inc.*, 167 NLRB 391 (1967); *Lindstrom Hatchery and Poultry Farms*, 49 NLRB 776) (1943); *Bayside Enterprises, Inc. vs. N.L.R.B.*, 429 U.S. 298, 50 L. Ed. 2d. 494, 97 S. Ct 576 (1977). As to the employees who engage in the pickup and delivery operations at the hatcheries (who

also perform hatchery and maintenance duties), it is clear that their work in the hatchery is likewise agricultural in nature Moreover, although hauling, generally, would appear to be a non-farm activity, the employees making pickups and deliveries in the circumstances presented here, particularly considering the process and functional integration in the hatchery, are similarly engaged in the exempt activity of raising poultry. Therefore, I conclude that the egg haulers and pullet haulers are also agricultural workers. *Arkansas Valley Industries, Inc.*, 167 NLRB 391 (1967).

As to the live haul employees, designated as chicken catchers, who work out of the processing plant, I conclude that their position is not included either in the primary or secondary definition of "agriculture" in Section 3(f) of the FLSA. In this connection, the Board has consistently held that when an employer contracts with farmers for the care and feeding of the employer's chicks, the employer's status as a farmer engaged in the raising of poultry ends with respect to those chicks. *Impco Poultry, Division of International Multifoods Corporation*, 202 NLRB 259 (1973). Thus addressing the unit placement of the chicken catching crews, the record contains sufficient evidence of their functional integration, with other processing plant employees to warrant their inclusion with those employees, and would not otherwise warrant their inclusion in a separate unit.

Feed haul drivers do nothing but deliver grain to the contract farmers. These deliveries do not constitute work incident to the farmer's farm, but are, rather, work incident to the feed mill. By the same token, the feed mill employees and the mechanics are not involved in farming. Consequently, the feed mill employees, feed haul employees and the mechanics at the Employer's Roaring

River, North Carolina facility are clearly non-agricultural employees. *Bayside Enterprise, Inc. vs. N.L.R.B.*, 429 U.S. 298, 50 L.Ed. 2nd. 494, 97 S. Ct. 576 (1977). The Petitioner, however, seeks a multi-location unit including all of the Roaring River employees along with the employees at the seven other locations of the Employer whom I have found to be agricultural employees. Further, the Petitioner, who for the first time at hearing included the feed mill employees in its petition, has not expressed a desire to represent only the Roaring River employees as a separate single location unit. Accordingly, as to the groups of individuals whom I have found to be agricultural employees, I find that no question affecting commerce exists within the meaning of 9(c)(1) of the Act, concerning the representation of "employees" as defined in Section 2(3) of the Act.

Moreover, as to those classification of employees whom I have concluded to be non-agricultural, and, therefore, subject to the coverage of the Act, I conclude that either the Petitioner has not sought their inclusion in an appropriate unit or as to the Roaring River employees has not expressed its desire to represent them as a single location unit. Therefore, I shall dismiss the petition in its entirety.

APPENDIX C

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD

Case No. 11-RC-5583

HOLLY FARMS FOOD, INC.

Employer

CHAUFFEURS, TEAMSTERS AND HELPERS
LOCAL UNION NO. 391, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA, AFL-CIO

Petitioner

ORDER REOPENING CASE AND REOPENING HEARING AND NOTICE OF HEARING

On March 27, 1989, a Decision and Order dismissing the instant petition, was issued by the undersigned on the grounds that certain of the employees sought were agricultural employees and therefore exempt from coverage under the Act and that the Petitioner had not expressed a desire to represent those non-agricultural employees determined to be covered by the Act. As the petition was dismissed, the subject case was closed on March 27, 1989. On our about April 6, 1989, the Petitioner filed a Request for Review wherein it asserted, inter alia, that it wished to proceed to an election in any unit or units the Board may find appropriate. I have

reviewed the Request for Review and decided to treat such Request for Review as a motion for reconsideration, and as the record evidence is insufficient to determine the scope and composition of an appropriate bargaining unit or units of the employees subject to the jurisdiction of the Act, I find the taking of additional evidence is necessary concerning the appropriate bargaining unit or units of the non-argicultural employees of the Employer who the Petitioner seeks to represent by the subject petition. Accordingly,

IT IS HEREBY ORDERED that Case No. 11-RC-5583 be, and it hereby is, reopened; and

IT IS FURTHER ORDERED that the hearing in this matter be reopened for the limited purpose of receiving such further relevant and material evidence in this matter as the parties may present concerning the appropriate bargaining unit or units of those employees of the Employer subject to the jurisdiction of the Act who the Petitioner seeks to represent by its petition herein.

YOU ARE HEREBY NOTIFIED that pursuant to Sections 3(b) and 9(c) of the Act, on the 12th day of May, 1989, at 9:00 a.m., at 437 Federal Building, 251 North Main Street, Winston-Salem, North Carolina, a reopened hearing will be conducted before a hearing officer of the National Labor Relations Board solely upon the aforesaid question of the appropriate bargaining unit or units of employees of the Employer subject to the jurisdiction of the Act, at which time and place the parties will have the right to appear in person or otherwise, and give testimony.

Dated at Winston-Salem, North Carolina, this 28th day of April, 1989.

/s/ Willie L. Clark Jr.
Willie L. Clark Jr.
National Labor Relations Board
Region 11
447 Federal Building
251 North Main Street
Winston-Salem, North Carolina 27101

APPENDIX D

NATIONAL LABOR RELATIONS BOARD

Case No. 11-RC-5583

In the Matter of: HOLLY FARMS CORPORATION, EMPLOYER

AND

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL UNION NO. 391, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO

PETITIONER

Pages: 159-309

Place: WINSTON-SALEM, NORTH CAROLINA

Date: MAY 12, 1989

* * *

[173] BY MR. HUDSON:

Q. Mr. Wittington, let's get your full name, please.

A. Samuel Smith Wittington.

Q. Who is your employer?

A. Holly Farms Food.

Q. In what capacity?

A. I'm the live production manager for Wilkesboro.

Q. You testified in the original hearing in this matter?

A. Yes, sir.

Q. Okay. Sam, I'm going to ask you a few questions concerning the live haul crews and the processing plant employees. The employees located in the processing plant. What's, could you repeat, again, what is your duties at Holly Farm? Who are you in charge of overseeing?

A. In a live production manager capacity, I'm over any of the functions up to the processing plant.

Q. And, that includes the live haul crews?

A. Live haul crews, hatcheries, feed mill.

Q. Could you specify the live haul crews?

A. The live haul crews in that department is the people that catch the broiler that is ready to come in to be processed at the processing plant.

Q. And, how many different job descriptions are there within the crew? How many job functions are there?

[174] A. There's three. There's drivers, forklift operators and catchers.

* * *

[178] Q. Okay. Could you describe the dependence that the processing plant has upon the chicken catching crews as far as the job functions are concerned?

A. Well, what we do, the catching process is timed in relation to plant processing in order to keep the birds from sitting in the holding sheds where the birds are going to drift in body weight to between catching time and processing. So, the catchers, what we have them is time for their work schedules in relation to the processing shifts and the catchers work so dictates keeping the processing plant [179] running.

Q. So, the chicken haulers bring the trucks with the chickens into the processing plant?

A. Yes, sir.

Q. And, who unloads the truck?

A. The truck, the trailer is dropped on the scales and a live haul employee then puts a yard bird, a yard shuttle truck, to the trailer and then puts it in the holding shed or either it's taken straight on down to the processing plant at receiving.

Q. And, who operates the shuttle, what are they called?

A. Yard birds what the name on there.

Q. And, who operates those?

A. The one that takes the birds off of the scales is a live haul employee. And, then the birds are put in a holding shed and then the plan processing has employees with yard birds that come up to the scale to pick up the birds and the live haul scale man tells the plant receiving person what trucks to take down in rotation.

Q. So, the live haul scale man communicates with the processing plant employee.

A. Receiving, yes.

Q. Alright. So –

HEARING OFFICER REESE: Mr. Hudson, for clarification purposes as we go through, when you get these categories, if [180] you would specify, have the witness specify how many people we're talking about in any one category.

MR. HUDSON: Okay.

Q. Sam is it true that the catching and delivery of the chickens and delivery to a processing plant, is that the first step in the processing plant operation?

A. Yes.

Q. And, so, the method that you've just described earlier, that's part of the coordination between the two groups?

A. Yes.

Q. And, the operation of the entire system?

A. Uh-huh.

Q. If the chicken catchers were to not deliver the chickens on time or to have a problem, that would affect the entire processing plant?

A. Like I said, we run it close time here between catching and processing to keep the birds from having to sit in a holding shed. So, yes, occasionally if we have, if we get behind or short on labor, truck tears up, there are times when the plant runs out of birds and they have to give the employees a break of ten or fifteen minutes before they get a truck there.

Q. And, if the live haul group didn't work at all, what would happen?

A. Plant wouldn't run. Wouldn't process birds. Now, if [181] they had, if they had carried over birds that were going to be further processed, that had been, you know, brought in the prior day, that department could take a further process. But as far as processing the live birds and that's really where it all originates from.

Q. And, if the plant is not functioning correctly, what is the effect on the live haul operations?

A. It would be the same, same situation. Like, if it comes a snow we have to coordinate between the plant, of course, and live haul as to how many chickens we're going to bring in.

Q. So, it's basically the same operation, all one operation?

A. Yes, it's all one, one, one's dependent on the other one.

Q. Sam, could you clarify for us what would happen with the other operations in the live haul production other than chicken catching crews if, say, the processing plant was to be shut down or closed down? We understand from what you have said earlier that the chicken

catching crews would not be able to work because of the shutdown of the processing plant, but how about the other operations under your, in live production?

A. If the plant was down for a day or two days or a matter of, you know, a week, it wouldn't have any, any influence on the other departments.

Q. And, which departments are those? Could you specify?

A. It would be all the live production. It would be the hatcheries, the feed mill, feed delivery.

[182] Q. The entire live haul production other than the chicken catching crews?

A. That's true.

Q. They would not be affected?

A. Not on short term, no, sir.

Q. Sam, I'm –

MR. HUDSON: You wanted, Mr. Hearing Officer, some numbers regarding the live haul people, the chicken catching crews.

HEARING OFFICER REESE: That's correct. Every job category I need a number for them and I assume they're only located at this one facility. Is that correct?

THE WITNESS: That's correct.

HEARING OFFICER REESE: I need a number of the people there in each category.

MR. HOGG: I got Mr. Wittington's list and gave them to you. Could you temporarily give them back to him, so we can count? What I'll do is go ahead and ask him to give you the numbers of the different groups, so we can save time.

HEARING OFFICER REESE: You mentioned under live haul there were drivers, forklift operators, catchers and I think there are also fuel attendants there at this location. Is that correct?

THE WITNESS: Yes.

HEARING OFFICER REESE: How many drivers are there?

[183] THE WITNESS: There's twenty-seven within one or two.

HEARING OFFICER REESE: And, forklift operators?

THE WITNESS: There's twelve, one for each crew.

HEARING OFFICER REESE: And catchers?

THE WITNESS: There is, there's about a hundred, there's about a hundred and nine to twelve. You have people coming and going.

HEARING OFFICER REESE: And, the fuel attendants?

THE WITNESS: There's two.

HEARING OFFICER REESE: And, you referred to all of these people as live haul employees?

THE WITNESS: Yes, sir.

MR. HOGG: That's a hundred and fifty to a hundred and fifty-two at my count.

HEARING OFFICER REESE: And, those are the only people you referred to as live haul employees?

THE WITNESS: Yes, sir. Now, in that list I think we have two, two cage repairmen along with the.

HEARING OFFICER REESE: That was cage? C-a-g-e? Cage repair?

THE WITNESS: Yes.

HEARING OFFICER REESE: And, they were included in which category? Catchers?

THE WITNESS: Yes, sir. In that count, yes, sir.

HEARING OFFICER REESE: That would be one hundred and nine [184] to one twelve, including the two cage repairmen.

THE WITNESS: Yes.

* * *

APPENDIX E

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

HOLLY FARMS FOODS, INC.

and Case No. 11-RC-5583

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL UNION NO. 391, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO

SUPPLEMENTAL DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held on March 14, 1989, at Winston-Salem, North Carolina, before a hearing officer of the National Labor Relations Board.

Thereafter, on March 27, 1989, the Regional Director issued a Decision and Order dismissing the petition on the grounds that Petitioner sought to represent certain of the Employer's employees who are exempt from coverage under the Act; that the Employer's "Chicken Catchers" appeared to share a community of interest with employees not sought by Petitioner; and, that Petitioner did not express a desire to represent a single-location unit at the Employer's Roaring River location.

Both parties timely filed Requests for Review of the aforementioned Decision and Order. In its Request for

Review filed on or about April 6, 1989, the Petitioner asserted, inter alia, that it wished to proceed to an election in any unit or units the Board might find appropriate. The undersigned Regional Director treated Petitioner's Request for Review as a motion for reconsideration and on April 28, 1989 issued an Order Reopening Cases and Reopening Hearing And Notice of Hearing.

A reopened hearing was held on May 12, 1989, at Winston-Salem, North Carolina, before a hearing officer of the National Labor Relations Board, for the purpose of taking additional evidence concerning the scope and composition of an appropriate bargaining unit or units of the Employer's non-agricultural employees. Subsequent to the reopened hearing, both parties filed briefs which have been carefully considered.

The Employer is engaged in an integrated poultry business which is administratively divided into divisions. Although the record is silent regarding the number of divisions, it is clear that the Live Production Division administratively controls its hatchery, live haul, feed haul and feed mill operations. Several categories of employees within the Live Production Division are "agricultural" employees exempt from coverage under the Act. The Live Production Division "agricultural" employees include all its hatchery employees, all its live haul employees assigned to its hatcheries, and all of its blood test employees. The Employer's Roaring River, North Carolina, Service Center is administratively controlled by its Fleet Administrative Services Division which also controls three other Service Centers in the Wilkesboro, North Carolina area. There are approximately 198 employees in the first unit and approximately eight employees in the second unit found appropriate herein.

The Petitioner asserts that the Regional Director erred in his March 14, 1989 decision in finding certain of the Employer's employees to be "agricultural" employees exempt from coverage under the Act. It argues that *Arkansas Valley Industries, Inc.*, 167 NLRB 391 (1967) and *Lindstrom Hatchery and Poultry Farms*, 49 NLRB 776 (1943) cited in the decision are distinguishable from the facts herein. Further, Petitioner states that since North Carolina exempts agricultural employees from mandatory Workers Compensation coverage, the Employer, by providing Workers Compensation coverage for all of its employees, impliedly did not consider certain of its employees to be "agricultural" employees prior to the filing of the Petitioner's petition. The Petitioner also asserts that it is ready to proceed to election in any unit or units which the Board or Regional Director might find appropriate. The Employer contends that the Regional Director erred in not finding that all of the employees sought by Petitioner are "agricultural" employees. The Employer, in the alternative, argues that the only appropriate collective bargaining unit of the non-agricultural employees are: (a) Live Haul (Chicken Catchers) and processing plant or Live Haul alone; (b) Feed Haul; (c) Feed Mill; and (d) all four of the Employer's Service Centers--three of which are not sought by Petitioner. There is no history of collective bargaining among any of the employees at issue.

Upon the entire record in this matter, I find that the hearing officer's rulings at the original hearing and supplemental hearing are free from prejudicial error and such rulings are hereby affirmed. In addition, I find that the Employer is engaged in commerce; that a labor organization's claim to represent certain employees of the Employer and; a question affecting commerce exists

concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

Both the Petitioner and Employer are essentially advancing the same arguments, which were made in their respective briefs following the first hearing, regarding the law applicable to the agricultural exemption. The Petitioner's argument regarding Workers Compensation benefits is unconvincing as it merely proves that the Employer is providing a benefit which he might not be mandated to provide. I, therefore, reaffirm my decision of March 27, 1989, finding that the Employer's Hatchery employees, pullet haulers, egg haulers and blood test employees are agricultural employees.

As to the scope and composition of appropriate collective bargaining units containing the remainder of the Employer's employees whom the Petitioner seeks to represent, the record evidence, consisting of the evidence at both the original and reopened hearing, indicates that the Live Haul employees (Chicken Catcher crews), Feed Haul employees, and Feed Mill employees are all part of the Employer's Live Production Division under the supervision of Sam Wittington, the Live Production Manager. The non-agricultural Live Haul employees include 27 truck drivers, 12 forklift operators, and 2 fuel attendants all of whom are divided into 12 chicken catching crews. The chicken catching crews catch, box and transport chickens to the Employer's processing plant in Wilkesboro, North Carolina. The Feed Mill employees include 3 receiving employees, 3 panel operators, 3 pellet mill controllers, 3 cleanup men, 3 vitamin pourers and 6 maintenance and repairmen. They produce the feed which the Employer's 27 Feed Haul drivers transport to the farms where the chickens are raised. All Live Production

division employees share the same fringe benefits and personnel policies. All Live Production division employees are on the same wage system—they all start at the same minimum and their wages are raised usually within 60 to 90 days depending on their job performance. However, there is little or no interchange between the Live Haul, Feed Haul and Feed Mill employees and each department is supervised day-to-day by its own supervisor. Moreover, the record of the second hearing clearly reflects that the Employer's Live Haul employees are not organizationally integrated with its Processing Plant employees and they do not share common supervision up to and including the division level. There is no significant interchange among or between the Employer's Live Haul employees and its Processing Plant employees and they are stationed in different buildings with their own separate restroom, breakroom and recreation room facilities. Furthermore, while the Employer's Live Haul employees are functionally integrated with its Processing Plant employees insofar as they provide chickens for processing, all the Live Division employees share in getting the chickens ready for processing and are thus also functionally integrated with the Processing Plant. The Feed Mill and Feed Haul employees are located in Roaring River, North Carolina, approximately 15 miles from the Live Haul employees' home base in Wilkesboro, North Carolina. According to the record, the Employer's Roaring River, North Caroline Service Center, which is a part of the Employer's Fleet Administrative Services Division, includes 6 mechanics and 2 parts men. The Service Center employees are stationed in their own separate building at the Employer's Roaring River location. The Roaring River Service Center employees are organizationally distinct from the Live Production Division employees. The Service Center employees share the same personnel

policies and fringe benefits as do all of the Employer's employees. However, unlike the Employer's Live Production Division employees, the Roaring River Service Center mechanics do not start at a minimum (or basic) entry level. Rather, a mechanic's starting wage is based upon his individual qualifications. The Roaring River Service Center employees have no interchange with the Live Production Division employees and do not have any common supervision with them. Therefore, I find that the Employer's Roaring River Service Center employees do not share a community of interest with its Live Production Division employees. The record also reflects that the Roaring River Service Center employees have little or no interchange with their counterparts at the Employer's other Service Centers. The Roaring River Service Center employees are locally hired. The Employer's Service Centers, while able to service all of the Employer's fleet, are all intended to specialize in specific vehicles within the Employer's fleet. The Roaring River Service Center is primarily dedicated to maintaining and repairing Live Production Division vehicles. The Roaring River Service Center employees wear uniforms the color of which they chose as the unit color. The employees at the other Service Centers choose their own respective uniform colors.

In representation cases, the Board gives consideration to the unit sought by a petitioner. See *E. H. Koester Bakery Co., Inc.*, 136 NLRB 1006 (1962). Further, the Board consistently determines whether the petitioned-for unit can be considered appropriate for purposes of collective bargaining rather than whether the petitioned-for unit constitutes the most appropriate unit. See *The Trustees of Columbia University in the City of New York*, 222 NLRB 309 (1976). Moreover, the Board, considers whether a labor organization seeks to represent the employees on a comprehensive basis. See *Hegins Corporation*, 255 NLRB 1236 (1981); *Purnell's Pride, Inc.*, 252 NLRB 110 (1980); *Beckett Aviation Corporation—Cleveland*, 254 NLRB 88 (1981); *Penn Color, Inc.*, 249 NLRB 1117 (1980); *Renzetti's Market, Inc.*, 238 NLRB 174 (1978).

The Petitioner herein seeks a unit comprised of all of the Employer's Live Production Division employees and the Employer's Roaring River Service Center employees. Petitioner is thus impliedly seeking the broadest appropriate unit or units within the Employer's Live Production Division which the Board might find appropriate. Further, the Petitioner does not seek to represent the Employer's Processing Plant employees who, as the complete record reflects, do not share a sufficient community of interest with its Live Haul employees to make them inseparable for collective bargaining purposes. Therefore, giving proper consideration to Petitioner's request and the fact that the Employer's Live Production Division employees share the same overall supervision, wage policies, personnel policies and fringe benefits, in addition to their functional integration, I find that the Live Production Division employees share a sufficient community of interest to constitute an appropriate unit for collective bargaining purposes. Further, I find that the Employer's Roaring River, North Carolina Service Center employees share a community of interest because they share the same day-to-day supervision; they are geographically separate from the other Service Centers; and, they have established a group identity through their choice of the color of their uniforms. Further, I find that the Employer has not overcome the presumptive appropriateness of the Roaring River Service Center

as a single-location unit. In this connection, the record does not show that the interest of the Roaring River Service Center employees have merged with those of its other service centers. See *Beckett Aviation Corp.*, 254 NLRB 88 (1981); *Renzetti's Market, Inc.*, 238 NLRB 174 (1978). Thus, while a unit consisting of all Service Centers may also be appropriate, I am convinced on the record herein that such a unit is not the only appropriate unit.

In light of the above and the record as a whole, I find that the following employees of the Employer constitute units appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

UNIT A

All of the Employer's Live Haul (Chicken Catching crews) employees at the Employer's facility in Wilkesboro, North Carolina, and the Employer's Feed Haul, and Feed Mill employees at the Employer's facility in Roaring River, North Carolina, excluding all office employees, guards and supervisors as defined in the Act.

UNIT B

All of the employees of the Employer at its Service Center in Roaring River, North Carolina, excluding all office employees, guards and supervisors as defined in the Act.

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during

that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Chauffeurs, Teamsters and Helpers Local Union No. 391, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO.

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that two copies of an election eligibility list, containing the names and addresses of all eligible voters, must be filed with the Regional Director within seven (7) days from the date of this Supplemental Decision and Direction of Election. The names on the list should be in alphabetical order. No

extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Supplemental Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1717 Pennsylvania Avenue, NW, Washington, DC 20570. This request must be received by the Board in Washington before July 5, 1989.

Dated at Winston-Salem, North Carolina, this 20th day of June, 1989.

/s/ Willie L. Clark, Jr.
WILLIE L. CLARK, Regional Director
National Labor Relations Board
Region 11
447 Federal Building
251 North Main Street
Winston-Salem, North Carolina 27101-3986

APPENDIX F

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

HOLLY FARMS FOOD, INC.
Employer

and Case 11-RC-5583

CHAUFFEURS, TEAMSTERS AND HELPERS LOCAL NO. 391, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO
Petitioner

DECISION ON REVIEW AND ORDER

Petitioner's Request for Review of the Regional Director's Supplemental Decision and Direction of Election is granted solely with regard to the Regional Director's conclusion that the Employer's Roaring River Service Center employees do not share a sufficient community of interest with the remaining petitioned-for employees to be included in a single unit. In all other respects, Petitiner's and Employer's Requests for Review are denied. Employer's application for stay of election also is denied. In denying review of the Regional Director's findings that the Employer's egg haulers, pullet haulers, and blood testers are agricultural employees as defined in Section 2(3) of the Act and Section 3(f) of the Fair Labor Standards Act, the Board finds that those workers are agricultural laborers under the secondary definition of agriculture set forth in Section 3(f). See *Bayside Enterprises v.*

NLRB, 429 U.S. 298 (1977); *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755 (1949).

Based on the Regional Director's findings, the relevant portions of which are uncontradicted, we find that the petitioned-for unit combining the Employer's Roaring River Service Center employees with its live haul, feed haul, and feed mill employees is an appropriate unit for bargaining. The factors cited by the Regional Director indicating that a separate unit of service center employees might be appropriate, such as separate supervision and wage systems, and the absence of interchange between employee groups, do not establish that those employees lack a sufficient community of interest to be included in a single unit with the Employer's other employees. Service center employees are subject to the same personnel policies and receive the same fringe benefits as other employees. Further, employees at the Roaring River Service Center maintain and repair the vehicles used by other unit employees, thus demonstrating functional integration. We find that these factors, which are not disputed, establish that employees at the Roaring River Service Center share a sufficient community of interest with the remaining employees in the petitioned-for unit to warrant both groups' inclusion in a single bargaining unit.

Accordingly, the Regional Director's finding that the requested overall unit of live haul, feed haul, feed mill, and Roaring River Service Center employees is not appropriate is reversed. The case is remanded to the Regional Director for further appropriate action, including rescheduling the election and the posting of revised Notices of Election.

JAMES M. STEPHENS, CHAIRMAN
MARY MILLER CRACRAFT, MEMBER
DENNIS M. DEVANEY, MEMBER

Dated, Washington, D.C., July 20, 1989.

APPENDIX G

SUPREME COURT OF THE UNITED STATES

No. 95-210

Holly Farms Corporation, et al.,
Petitioners

v.

National Labor Relations Board, et al.

ORDER ALLOWING CERTIORARI.
Filed November 6, 1995.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted limited to Question 5 presented by the petition.

November 6, 1995